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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

CATRON *v.* NORTON HARDWARE CO.

CATRON *v.* A. L. P. CORDER & CO.

Sept. 19, 1918.

[96 S. E. 853.]

1. **Equity (§ 378*)—Jury Trial—Conflicting Evidence.**—In attachment in equity where the evidence as to whether defendant owes the debtor anything is conflicting, unsatisfactory, and doubtful, and evenly balanced, an issue out of chancery should have been submitted to the jury.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 60.]

2. **Appeal and Error (§ 974 (2)*)—Appealable Orders—Discretion as to Submission of Issues to Jury.**—The discretion of the court to direct trial of an issue by jury in chancery is not arbitrary, and a mistake in its exercise is reviewable.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 455; 8 Va.-W. Va. Enc. Dig. 47, 77.]

3. **Equity (§ 379*)—Jury Trial—Conflicting Evidence.**—The object of submitting an issue out of chancery to the jury being to inform the conscience of the chancellor, he may direct its submission for this purpose, though not requested to do so by either party.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 65.]

4. **Appeal and Error (§ 1009 (6)*)—Presumptions.**—The presumption in favor of the chancellor's ruling on evidence is not available in support of his decree, where the testimony was given wholly by deposition.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 611.]

5. **Equity (§ 378*)—Attachment in Equity—Evidence—Sufficiency—Issues to Jury.**—In equity attachment suit, by materialmen who furnished material to subcontractor for road building, against the contractor, who had by his contract guaranteed payment for materials, evidence held to sustain decree for plaintiff, so that it was not error to fail to submit issue to jury.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 60.]

Appeal from Circuit Court, Wise County.

Two bills by the Norton Hardware Company and A. L. P. Cor-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

der & Co. against J. H. Catron and another. From the decree in each case, Catron appeals. Affirmed.

E. M. Fulton, of Wise, for appellant.

Bond & Bruce and *Vicars & Perry*, all of Wise, for appellees.

CLINCHFIELD COAL CORPORATION *v.* REDD.

Sept. 19, 1918.

[96 S. E. 836.]

1. Malicious Prosecution (§ 16*)—Elements of Tort.—To sustain action for malicious prosecution, it must be alleged and proved that prosecution was set on foot by defendant, and has terminated not unfavorably to plaintiff, that it was instituted or procured by the co-operation of defendant, and that it was without probable cause and with malice.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 497.]

2. Malicious Prosecution (§ 35 (1)*)—Termination of Prosecution.—Dismissal of warrant by justice who issued it, without trial, at instance of defendant, was sufficient termination of prosecution to entitle plaintiff to sue for malicious prosecution.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 497.]

3. Malicious Prosecution (§ 64 (1)*)—Action by Servant—Ratification—Sufficiency of Evidence.—In action for malicious prosecution against coal company, evidence held sufficient to support verdict, and show that prosecution was instigated or brought about by co-operation of defendant, either on theory that injury was done by company's servant in course of his employment, or that company subsequently ratified and continued prosecution.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 503.]

4. Appeal and Error (§ 172 (1)*)—Question Not Raised Below.—Where, on trial of action for malicious prosecution, authority of officer who arrested plaintiff was challenged in no way, question cannot be raised on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 557.]

5. Malicious Prosecution (§ 42*)—Persons Liable—Employment of Public Officer.—Fact that employee of private detective agency was public officer did not preclude him from acting also in capacity of agent for coal company.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 497.]

6. Master and Servant (§ 316 (1)*)—"Independent Contractor."—"Independent contractor" is one who, exercising independent em-

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